

**STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

**Roman M. Benson
NMLS No. 165728**

Enforcement Case No. 11-11148

Applicant.

_____ /

Issued and entered

on 2-16 2011

Stephen R. Hilker
Chief Deputy Commissioner

ORDER OF DENIAL FOR A MORTGAGE LOAN ORIGINATOR LICENSE

A. STATEMENTS OF LAW

1. Licensure of Mortgage Loan Originators in the State of Michigan is governed and regulated by the Office of Financial and Insurance Regulation (OFIR) under the Mortgage Loan Originator Licensing Act, 2009 PA 75, as amended, MCL 493.131 *et seq.*, (Act).
2. Under Michigan law an applicant may have the right to appeal this order.
3. Section 9(1)(d) of the Act, MCL 493.139(1)(d), states that:
 - (1) The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

 - (d) The applicant has demonstrated financial responsibility, character, and general fitness that commands the confidence of the community and warrants a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this act.
4. Section 3(i) of the Act, MCL 493.133(i), defines "Licensed Mortgage Loan Originator" as, "a mortgage loan originator who holds a valid license issued by the commissioner under this act."

5. At the time of application, Section 3(l) of the Act, MCL 493.133(l), defined a "Mortgage Loan Originator" as a person who meets all of the following:

(i) For compensation or gain or in the expectation of compensation or gain, does any of the following:

(A) Takes a residential mortgage loan application.

(B) Offers or negotiates terms of a residential mortgage loan.

(ii) Is not an individual engaged solely as a loan processor or underwriter except as otherwise provided in section 5(3).

(iii) Is not a person who only performs real estate brokerage activities and is licensed or registered under the laws of this state, unless the person is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of a lender, mortgage broker, or other mortgage loan originator.

(iv) Is not a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 USC 101(53D).

6. Section 5(1) of the Act, MCL 493.135(1), states:

Subject to subsection (5), unless specifically exempted under subsection (2), beginning July 31, 2010, an individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license under this act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

7. Section 5(2) and 5(5) of the Act, MCL 493.135(2) and (5), do not apply in this case.

8. Section 21(a) of the Act, MCL 493.151(a), states:

In addition to any other duties imposed on the commissioner under this act, the commissioner shall require mortgage loan originators to be licensed and registered through the nationwide mortgage licensing system and registry. To carry out this requirement, the commissioner is authorized to participate in the nationwide mortgage licensing system and registry and may by rule establish other requirements that he or she considers necessary, including, but not limited to, any of the following:

(a) Background checks for any of the following:

- (i) The criminal history of a licensed mortgage loan originator or license applicant through fingerprint or other databases.
- (ii) Information about a licensed mortgage loan originator or license applicant in civil or administrative records.
- (iii) A licensed mortgage loan originator's or license applicant's credit history.
- (iv) Any other information about a licensed mortgage loan originator or license applicant considered necessary by the nationwide mortgage licensing system and registry.

9. Section 33(1)(a) of the Act, MCL 493.163(1)(a), states:

(1) In addition to any authority provided under this act, the commissioner may conduct any of the following investigations and examinations:

(a) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this act, the commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to, any of the following:

- (i) Criminal, civil, and administrative history information.
- (ii) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency, as defined in section 603 of the fair credit reporting act, 15 USC 1681a.
- (iii) Any other documents, information, or evidence the commissioner considers relevant to the inquiry or investigation, regardless of the location, possession, control, or custody of those documents, information, or evidence.

B. FINDINGS OF FACT

- 10. On or about March 11, 2010, Roman M. Benson submitted an application for a Mortgage Loan Originator license through the Nationwide Mortgage Licensing System (NMLS).
- 11. On or about March 11, 2010, the Office of Financial and Insurance Regulation (OFIR) received Roman M. Benson's Mortgage Loan Originator license application.

12. As provided in Sections 21 and 33 of the Act, MCL 493.151 and 493.163, OFIR conducted an investigation of Roman M. Benson.
13. As part of its investigation, OFIR discovered a claims history indicating a total of ten (10) civil judgments were filed against the Respondent between 2000 and 2008:

September 7, 2000	\$21,807.00
May 11, 2001	\$787.00
June 27, 2003	\$4,351.00
November 19, 2003	\$1,581.00
December 10, 2003	\$848.00
October 27, 2005	\$803.00
June 12, 2006	\$14,146.00
May 31, 2007	Amt. Unknown
June 7, 2007	Amt. Unknown
September 10, 2008	\$1,832.00

14. OFIR's investigation additionally found the following government liens issued against Roman M. Benson:

1995 Federal Tax Lien	\$49,712
2001 Federal Tax Lien	\$130,174
2007 Federal Tax Lien	\$190,081
2007 Federal Tax Lien	\$43,310
2008 Federal Tax Lien	\$11,665
2009 Federal Tax Lien	\$5,306
2000 State Tax Lien	\$6,926
2001 State Tax Lien	\$130,196
2003 State Tax Lien	\$10,040
2004 State Tax Lien	\$30,820
2005 State Tax Lien	\$16,958
2006 State Tax Lien	\$2,838
2008 State Tax Lien	\$68,913

15. As part of his application submitted to the NMLS and OFIR, Roman M. Benson represented by oath:

(1) That the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this application, are current, true, accurate and complete and are made under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law.

16. Under the section of the application titled "Disclosure Questions" the Regulatory Action question asks the following:
- (I) Has any state or federal regulatory agency or foreign financial regulatory authority ever:
 - (1) found you to have made a false statement or omission or been dishonest, unfair or unethical?
 - (2) found you to have been involved in a violation of a financial services-related business regulation(s) or statute(s)?
 - (3) found you to have been a cause of a financial services-related business having its authorization to do business denied, suspended, revoked or restricted?
 - (4) entered an order against you in connection with a financial services-related activity?
 - (5) revoked your registration or license?
 - (6) denied or suspended your registration or license, disciplined you, or otherwise by order, prevented you from associating with a financial services-related business or restricted your activities?
 - (7) barred you from association with an entity regulated by such commissions, authority, agency, or officer, or from engaging in a financial services-related business?
 - (8) issued a final order against you based on violations of any law or regulations that prohibit fraudulent, manipulative, or deceptive conduct?
17. Roman M. Benson answered all questions listed in paragraph 16 above in the negative.
18. OFIR's investigation showed Roman M. Benson, along with his wife, owned and operated Benson Group Financial Corporation from February 22, 1995 through August 15, 2000 through its license as a mortgage broker and mortgage lender pursuant to the Mortgage Brokers, Lenders, and Servicers Licensing Act, 1987 P.A. 173, as amended, MCL 445.1651 *et seq.*, (MBLSLA), the Secondary Mortgage Loan Act, 1981 P.A. 125, as amended, MCL 493.51 *et seq.*, (SMLA).
19. On August 26, 1998, the Commissioner of the Financial Institutions Bureau issued a Consent Order in which the Commissioner found and concluded Benson Group Financial Corporation, Kristen Benson and Roman Benson violated the following financial services-related business statutes:

Section 5 of Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA), MCL 445.1655,
Section 21(2) of MBLSLA, MCL 445.1671(2)
Section 21(3) of MBLSLA, MCL 445.1671(3)
Section 22(d) of MBLSLA, MCL 445.1672(d)
Section 23(1) of MBLSLA, MCL 445.1673(1),
Section 29(1)(b) of MBLSLA, MCL 445.1679(1)(b)

Section 2(10) of the Mortgage Lending Practices Act, 1977 PA 135, as amended, MCL 445.1601 *et seq.*, MCL 445.1602(10)
Section 5(1) of the Mortgage Lending Practices Act, 1977 PA 135, as amended, MCL 445.1601 *et seq.*, MCL 445.1605(1)

Section 2 of Secondary Mortgage Loan Act (SMLA), MCL 493.52, and in conjunction with such violation, Section 22 of MBLSLA, MCL 445.1672

Article 25 of the Occupational Code, MCL 339.2501 *et seq.* and in conjunction with such violation Section 22 of the MBLSLA, MCL 445.1672.

20. On August 26, 1998, the Commissioner of the Financial Institutions Bureau and the Benson Group Financial Corporation, Kristen Benson and Roman Benson entered into a Stipulation agreement requiring Benson Group Financial Corporation, Kristen Benson and Roman Benson to:

Immediately cease and desist from operating in violation of any provisions of the MBLSLA.

Maintain a net worth of at least \$25,000.

Maintain a sufficient cash balance which would enable payment of current obligations and liabilities at the time they are due.

Conduct fiscal year-end audits for three years following the date of the Order and submit said within 90 days of its fiscal year end.

Provide copies of the audit performed for the year-end 1998 within six months of the date of the Consent Order.

Submit for three years following the date of the Consent Order quarterly financial statements prepared by a qualified independent party.

Maintain application fees, credit report fees, and appraisal fees received from borrowers in an escrow account until such time as

the loan is closed, denied, or withdrawn, or the money is paid to a credit reporting agency or appraiser for services rendered.

File its annual report and any other filings required by the Financial Institutions Bureau within the time period set forth in MBLSLA.

Preserve and keep available for examination all books, accounts, records and documents pertaining to its business for not less than three years after the conclusion of the fiscal year in which the book, account, record or document was created.

State all financials statements in accordance with Generally Accepted Accounting Principals which are to be submitted.

Make available for public distribution a pamphlet or document explaining in general terms the credit granting institutions criteria for approval or denial of a loan application.

Post a written notice in a conspicuous place to reasonably appraise a loan inquirer or application of his or her rights under Mortgage Lending Practices Act, 1977 PA 135, as amended, MCL 445.1601 *et seq.* in its main office and each branch office or service center.

Not broker or make any secondary mortgage loans until such time as it obtained its requisite license or registration pursuant to the SMLA.

Not withhold information from the Commissioner that, if submitted, would have made it ineligible for licensing or would have warranted the Commissioner's denial of the license application.

Subject to pre-emption and state usury laws, only require borrowers to pay reasonable and necessary charges which are the actual expenses incurred in connection with the making, closing, disbursing, extending, readjusting or renewing a mortgage loan and a loan processing fee.

Refund any and all overcharges on borrowers for credit reports and/or appraisal fees.

Not assign mortgage loans prior to the disbursement of 75% or more of the proceeds of the mortgage loans to, or for the benefit of the borrower.

Not broker commercial mortgages until properly licensed.

Not use disclosures stating, "It is illegal to establish a minimum mortgage amount of more than \$5,000.00 or a minimum home improvement loan of more than \$500.00," or "If our escrow account indicates an excess of funds, we will be given the option of (A) having the funds returned to us, (B) applying the funds to our principal balance, or (C) leaving the funds in our escrow account for future increases."

Maintain a program to monitor and assure compliance with all state and federal laws and regulations pertaining to brokering, origination and closing of mortgage loans, including the designation of a compliance officer who will conduct quarterly reviews of a sample of files for closed loans and rejected loan applications, which were to be submitted within 60 days of the end of the quarter.

Pay certain fines and investigation costs.

21. Based on the August 26, 1998 Consent Order, Roman M. Benson was required to answer questions (I)(2) and (I)(4) in paragraph 16 above in the affirmative.
22. On August 10, 2000 the Commissioner of the Office of Financial and Insurance Services and the Benson Group Financial Corporation, Kristen Benson and Roman Benson entered into a Stipulation whereby the Commissioner alleged Benson Group Financial Corporation, Kristen Benson and Roman Benson violated Section 22(a) of the MBLSLA and the prior Stipulation and Consent Order by:

Failing, for a period of three years beginning August 28, 1998, to submit quarterly compliance reports within 60 days of the end of the quarter.

Failing, for a period of three years beginning August 28, 1998, to submit quarterly financial statements prepared by a qualified independent party.

Failing to maintain a sufficient cash balance which would allow payment of all current obligations and liabilities at the time they are due.

Failing, for a period of three years beginning August 28, 1998, to conduct a fiscal year-end audit and submit the audit within 90 days of its fiscal year end and

Failing to provide copies of the audits performed for calendar year-end 1998 within 6 months of August 28, 1998.

Failing to maintain application fees, credit report fees, and appraisal fees received from borrowers in an escrow account until such time as the loan is closed, denied, or withdrawn, or the money is paid to a credit reporting agency or appraiser for services rendered.

Failing to file annual reports and other filings required within the time period set forth in the MBLSLA.

23. On August 15, 2000, the Commissioner of the Office of Financial and Insurance Services issued a Consent Order against the Benson Group Financial Corporation, Kristen Benson and Roman Benson finding that the Benson Group Financial Corporation, Kristen Benson and Roman Benson violated Section 16(3) of the MBLSLA and the prior Stipulation and Consent Order by failing to cease and desist from operating in violation of the MBLSLA.
24. The August 15, 2000 Consent Order additionally found the Benson Group Financial Corporation, Kristen Benson and Roman Benson violated Section 22(i) of the MBLSLA and Section (22)(2)(f) of the SMLA by failing or refusing to pay within a reasonable time, those expenses assessed and revoked all the licenses under the MBLSLA and registrations pursuant to the SMLA.
25. Based on the August 15, 2000 Consent Order, Roman M. Benson was required to answer questions (I)(2), (I)(4), (I)(6) and (I)(7) in paragraph 16 above the affirmative.

C. CONCLUSIONS OF LAW

26. Based on the numerous civil judgments entered against him and a demonstrated pattern of non-payment of state and federal taxes resulting in liens, Roman M. Benson has not demonstrated financial responsibility that commands the confidence of the community and warrants a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the Act.
27. Based on the untrue answers and failure to disclose the prior activities resulting in two stipulation and consent orders and ultimately, the revocation of the license and registration of Benson Group Financial Corporation under the MBLSLA and SMLA and the extended history of civil judgments and tax liens against him, Roman M. Benson has not demonstrated character that commands the confidence of the community and warrants a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this act.
28. The issuance of a second Stipulation and Consent Order revoking licenses and registrations connected to Roman M. Benson under the MBLSLA and SMLA for violating the terms and conditions of a first Stipulation and Consent Order do not demonstrate the general fitness that commands the confidence of the community and

warrants a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the Act.

29. Therefore, Roman M. Benson has failed to meet the minimum licensing requirements of Section 9(1)(d) of the Act, MCL 493.139(1)(d), and denial of his application is required under the Act.

D. ORDER

Based on the Statements of Law, Findings of Fact and Conclusions of Law above, as required under Section 9(1)(d) of the Act, MCL 493.139(1)(d), it is **ORDERED** that Roman M. Benson's Mortgage Loan Originator license application is **DENIED**.



Stephen R. Hilker
Chief Deputy Commissioner

Dated: 2/16/11